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10 **UNITED STATES DISTRICT COURT**
11 **CENTRAL DISTRICT OF CALIFORNIA**
12 **EASTERN DISTRICT – RIVERSIDE**

13 SAVE OUR FOREST ASSOCIATION,
14 INC.

15 Plaintiff,

16 vs.

17 UNITED STATES FOREST SERVICE, *et*
18 *al.*,

19 Defendants.
20
21
22

Case No.: 5:24-cv-01336-JGB-DTB
**PLAINTIFF’S OPPOSITION TO
YUHA AVIATAM OF SAN
MANUEL NATION’S MOTION
TO INTERVENE FOR LIMITED
PURPOSE OF MOTION TO
DISMISS**

Date: July 7, 2025

Time: 9:00 a.m.

Judge: Hon. Jesus G. Bernal

Dept: Courtroom 1, Riverside

Action Filed: June 25, 2024

Trial Date: March 31, 2026

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7	<i>Southwest Center for Biological View v. Babbitt</i> , 150 F.3d 1152 (9th Cir.	
8	1998)	26
9	<i>W. Watersheds Project v. Haaland</i> , 22 F.4th 828 (9th Cir. 2022)	19
10	<i>Wilderness Society v. U.S. Forest Service</i> , 630 F.3d 1173 (2011).....	10, 20
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TABLE OF EXHIBITS

Exhibits to Declaration of Rachel Doughty				
No.	Authentication	Date	Document Title	Short Title
1	Doughty Decl.	02/11/2010	Local Agency Formation Commission County of San Bernardino (“LAFCO”) Resolution No. 3088	LAFCO Res. 3088
2	Doughty Decl.	10/10/2006	LAFCO 3053 Staff Report	LAFCO Staff Report 3053
3	Doughty Decl.	01/25/2019	<i>Newspaper article: San Bernardino Sells its Share of Historic Del Rosa Mutual H2O Co. for Less than \$2,300</i>	San Bernardino Sentinel Article
4	Doughty Decl.	08/05/2022	Story of Stuff Project Closing Brief	SOS Closing Brief
5	Doughty Decl.	05/16/2022	Sur-Rebuttal Testimony of Gregory Allord (SOS 288)	Allord Sur-Rebuttal Testimony
6	Doughty Decl.		Curriculum Vitae of Gregory Allord	Allord Qualifications
7	Doughty Decl.		Gregory Allord Slides	Allord Slides
8	Doughty Decl.	Feb. 2023	Special Use Permit No. FCD728503, issued to BTB	2023 SUP
9	Doughty Decl.	Sep. 2005	USDA Land Management Plan, Part 1 San Bernardino National Forest (excerpts)	2005 Land Management Plan
10	Doughty Decl.		USFS Handbook 2509.22 (excerpts)	
11	Doughty Decl.	07/27/2018	USFS Decision Memo Regarding Nestle	2018 USFS Memo
12	Doughty Decl.	09/29/2023	USFS Letter to BTB Regarding the 2021 Cease and Desist Order	2023 USFS Letter

No.	Authentication	Date	Document Title	Short Title
13	Doughty Decl.	11/20/2023	Second USFS Letter to BTB Regarding the 2021 Cease and Desist Order	2023 USFS Letter Second Request
14	Doughty Decl.	03/01/2024	USFS Letter to BTB Requesting Missing Information	2024 USFS Letter
15	Doughty Decl.	03/25/2024	USFS Letter to BTB Reiterating Request for Missing Information	2024 USFS Letter Second Request
16	Doughty Decl.	04/18/2024	USFS Letter to BTB Third Request for Missing Information	2024 USFS Letter Third Request
17	Doughty Decl.	04/24/2024	USFS Letter to BTB Fourth Request for Missing Information	2024 USFS Letter Fourth Request
18	Doughty Decl.	05/04/2024	USFS Letter to BTB Regarding Insufficient Information	2024 USFS Insufficient Evidence Letter
19	Doughty Decl.	06/21/2024	USFS Second Letter to BTB Regarding Insufficient Information	2024 USFS Second Insufficient Evidence Letter
20	Doughty Decl.	07/26/2024	USFS Notice to BTB Terminating SUP	2024 SUP Termination
21	Doughty Decl.	10/14/2021	Newspaper article: Arrowhead Bottler: Most Water Piped from National Forest is Returned to Ground or Supplied to Tribe	2021 Desert Sun Article
22	Doughty Decl.	05/14/2024	BTB Letter to USFS Regarding SUP Termination	2024 BTB Letter re Termination
23	Intentionally Omitted			

No.	Authentication	Date	Document Title	Short Title
24	Doughty Decl.	01/03/2025	Motion to Intervene of Yuhaaviatim of San Manuel Nation; Motion for Order Shortening Time (ECF 64)	Tribe Motion to Intervene
25	Doughty Decl.	01/03/2025	Declaration of Paul Hamai In Support of Motion to Intervene an Motion for Preliminary Injunction (ECF 65-10)	Hamai Decl.
26	Doughty Decl.	01/14/2025	Order Granting Yuhaaviatam of San Manuel Nation's Motion to Intervene (ECF 91)	Order Granting Intervention, BTB v. USFS
27	Doughty Decl.	01/03/2025	Declaration of Alexandra McCleary in Support of Motion to Intervene and Preliminary Injunction (ECF 65-9)	McCleary Decl.
28	Doughty Decl.	08/24/2018	Special Use Permit No. FCD728501	Nestle 2018 SUP
29	Doughty Decl.	Aug. 2022	Special Use Permit No. FCD728502	BTB 2022 SUP
30	Doughty Decl.	08/01/2023	Special Use Permit No. FCD728503	BTB 2023 SUP
31	Doughty Decl.	12/11/2023	Letter Agreement Amending 80/20 Agreement During Interim Period (ECF 65-8)	2023 Letter Agreement
32	Doughty Decl.	05/20/2016	News Article: <i>San Manuel Buys Landmark Arrowhead Springs Property in San Bernardino</i>	2016 Desert Sun Article
Exhibits to Declaration of Steve Loe				
No.	Authentication	Date	Document Title	Short Title
A	Loe Decl.	12/17/2021	Declaration of Steve Loe	Loe Declaration

No.	Authentication	Date	Document Title	Short Title
B	Loe Decl.	12/17/2021	Declaration of Steve Loe (SOS 031)	Loe Declaration SOS
C	Loe Decl.	4/8/2022	Sur-Rebuttal Testimony of Steve Loe (SOS 282)	Loe Sur- Rebuttal
D	Loe Decl.	12/17/2021	Loe Sur-Rebuttal Slides (SOS 283)	Loe Slides
E	Loe Decl.	2/23/2015	Loe Letter to SBNF Regarding Strawberry Creek Emergency	2023 Loe SBNF Letter
F	Loe Decl.	1/31/1987	1986 Water Rights Report	1986 Water Rights Report
G	Loe Decl.	Sep. 1987	1987 Water Rights Report	1987 Water Rights Report
Exhibits to Declaration of Hugh Bialecki				
No.	Authentication	Date	Document Title	Short Title
1	Bialecki Decl.	02/10/2022	Email from San Manuel Tribe to State Water Resources Control Board	2022 Tribe Email to SWRCB
2	Bialecki Decl.	11/18/2009	LAFCO Resolution No. 2942	LAFCO Resolution No. 2942
3	Bialecki Decl.	2023	Water Extraction Recordation for Arrowhead	2023 Extraction Record
4	Bialecki Decl.	2016 - 2021	Prior Water Extraction Records for Arrowhead	Prior Extraction Records

I. Introduction

The Administrative Procedure Act (“APA”) establishes the right to judicial review of unlawful federal agency action and waives federal sovereign immunity to ensure the vindication of that right. Pursuant to this right of judicial review, Plaintiff Save Our Forest Association (“Plaintiff” or “SOFA”) challenges the U.S. Forest Service’s (“USFS”) decision to grant BlueTriton Brands, Inc. (“BTB”) a permit to occupy the San Bernardino National Forest (“SBNF”) lands and BTB’s unlawful diversion of water from SBNF Strawberry Creek and its tributary Springs (“Strawberry Creek”). The Yuhaaviatam of San Manuel Nation (“Nation”) has moved to intervene in this case for the sole purpose of moving to dismiss Plaintiff’s claims under the theory that its water delivery contract with BTB is a significantly protectible interest such that the Nation is a required party but also reserves its sovereign immunity and does not consent to be sued, seeking dismissal.

The Nation’s claimed interests fail to meet the threshold for a “significantly protectable” interest required by law. The land at issue lies within a national forest managed by the federal government, not within tribal territory. The Nation has no ownership or jurisdictional interests in Strawberry Creek or its tributary springs. In addition, there is no relationship between the Nation’s legal interests in its contract with BTB and the claims at issue in this case. Plaintiffs are not seeking an order directing the Service to conclude that any activity by the Nation is unlawful or barring the Nation from applying for its own Special Use Permit (SUP). The Nation’s interest in barring USFS from engaging in discreet, federal law mandates is not an interest that is “protectable under law.”

The Nation’s proposed limited intervention for purposes of dismissal would eliminate Plaintiff’s right to judicial review of unlawful governmental action,

1 potentially not just in Strawberry Canyon but over the 7.4 million acres in Southern
2 California claimed as ancestral territory by The Nation. Although the Ninth Circuit
3 generally interprets the rule for intervention “broadly in favor of proposed
4 intervenors,” that rationale does not apply here. *Wilderness Society v. U.S. Forest*
5 *Service*, 630 F.3d 1173, 1179 (2011). The courts favor broad intervention because it
6 promotes the efficient resolution of issues and expands access to the courts.
7 However, the Nation’s motion does not advance these goals as it aims solely to
8 dismiss legitimate legal claims under the guise of immunity—an immunity it has not
9 sought in the related case *BlueTriton Brands v. United States Forest Service et al.*,
10 No. CV 24-9720 JGB (DTBx) (C.D. Cal. filed Aug. 4, 2024) (“*BTB v. USFS*”).
11 Rather than promoting efficiency or fairness, the intervention would undermine
12 Plaintiff’s access to justice by preventing the Court from addressing the merits of
13 Plaintiff’s claims altogether.

14 **II. Factual Background**

15 **A. BTB Diversion History and Effect**

16 Since around 1930 BTB and its predecessors in interest, have operated and
17 maintained water diversion structures in the **Strawberry Creek Watershed** (also
18 referred to as **Strawberry Canyon**) within the SBNF. **Strawberry Creek** is
19 tributary to **East Twin Creek** and the Santa Ana River. The West Fork of
20 Strawberry Creek originates in the San Bernardino National Forest (“**SBNF**”) with
21 its headwaters in Township 2 North Range 3 West (T2N R3W) (“**Headwaters**
22 **Springs**”). Strawberry Creek flows approximately three miles, into Township 1
23 North Range 3 and 4 West (T1N R3W and R4W), which is where the Arrowhead
24 Hotel is located.

1 BTB's present-day spring diversions are from the Headwaters Springs and
2 from a complex of springs (10, 11, 12) which are located, like the Headwaters
3 Springs, in the drainage area of a tributary of Strawberry Creek, but at a lower
4 elevation (the "**Cienega Springs**"). Both the Headwaters Springs and the Cienega
5 Springs are located entirely within the SBNF. All of the water at issue in this case is
6 diverted from the West Fork of Strawberry Creek Watershed, which is within the
7 Strawberry Creek Watershed, and all within the SBNF.

8 The present-day engineering of the water diversion system in Strawberry
9 Canyon started in 1929 and 1930. The system expanded over the years with the
10 addition and deepening of boreholes, larger pipes, and more points of diversion. The
11 only present-day diversion structure in Strawberry Canyon is BTB. Only BTB and
12 its predecessors have ever held a Special Use Permit ("**SUP**") to divert water from
13 Strawberry Canyon. *See* Doughty Declaration, filed herewith, Exhs. 4 to 7, Loe
14 Declaration, filed herewith, Exhs. A to D.

15 BTB is party to a contract, originating from a water rights dispute in the early
16 1930s, that requires BTB to deliver 20% of whatever water it diverts off of federal
17 land to the party owning the Arrowhead Springs Hotel. Doughty Decl, Exh. 4, The
18 Hotel Property is presently owned by the Nation, which acquired it in 2016. Doughty
19 Decl. ¶8.

20 //

21 //

22 **B. USFS-Issued SUPs**

23 **1. Pre-2018 SUPs**

24 USFS first issued an SUP to divert water in Strawberry Canyon in 1931 to
25 Arrowhead & Puritas Waters Inc. and Arrowhead Springs Corporation (collectively
26

1 “**Arrowhead**”) for the purpose of “constructing and maintaining pipelines.” There is
2 no evidence of water diversion from Strawberry Canyon by anyone prior to 1929.
3 Doughty Decl. Ex. 4, pp. 17-24.

4 **2. 2018 Decision to Issue SUP to Nestlé**

5 On July 27, 2018, Forest Ranger Joseph Rechsteiner signed a decision memo
6 (“**2018 Decision Memo**”), Doughty Decl., Exh. 11, memorializing his decision to
7 issue a new SUP to the public company Nestlé, a subsidiary of public company
8 Nestlé, S.A., to operate and maintain existing diversion structures in Strawberry
9 Canyon. The 2018 Decision Memo allowed issuance of an SUP of 3 years’ term
10 with two one-year discretionary renewals. The 2018 Decision Memo also stated that
11 “[i]f the Land Management Plan requirements can be met, and the applicant has a
12 valid state water right, then the access and infrastructure that facilitates water
13 extraction can be authorized.”

14 **3. Nestlé 2018 SUP**

15 On August 24, 2018, Nestlé’s representative and Ranger Rechsteiner signed
16 the three-year SUP authorized by the 2018 Decision Memo, which SUP would
17 expire on August 24, 2021 (“**Nestlé 2018 SUP**”) (FCD728501). Doughty Decl., Exh.
18 28. The contents of the Nestlé 2018 SUP specified that the permit was not assignable
19 or transferable. *Id.* at p. 2 (I.H.). The 2018 SUP stated: “Any change in control of the
20 business entity [holding the permit] shall result in termination of this permit.” *Id.* at
21 p. 3 (I.J.2.) The contents of the Nestlé 2018 SUP also stated “[t]his permit does not
22 confer any water rights on the holder. . . . The United States reserves the right to
23 place any conditions on installation, operation, maintenance, and removal of
24 facilities to . . . divert, store, or convey water on National Forest System lands
25 covered by this permit that are necessary to protect public property, public safety,
26

1 and natural resources on National Forest System lands in compliance with applicable
2 law.” Doughty Decl. Exh. 28 at p. 12 (VIII.H).

3 **4. BTB 2022 & 2023 SUPs**

4 On August 18, 2022, Acting Ranger Joseph Jordan signed a SUP for BTB,
5 FCD728502 (“**BTB 2022 SUP**”). Doughty Exh. 29. This SUP expired six days later
6 on August 24, 2022. On February 21, 2023, the Forest Service and BTB executed a
7 second SUP, FCD728503 (“**BTB 2023 SUP**”). Doughty Exh. 30. The BTB 2023
8 SUP contained similar recitations and entries regarding water rights as the BTB
9 2022 SUP.

10 The BTB 2023 SUP, by its own terms, expired on August 24, 2023, with a
11 provision that “[a]pplications for a new permit must be submitted at least 6 months
12 prior to expiration of this permit.” *Id.* at p. 2 (I.D.). It also states the holder “shall”
13 comply with state environmental laws. *Id.* at p. 7 (V.A.). Upon termination, it is
14 BTB’s responsibility to “remove all structures and improvements [. . .] within a
15 reasonable period prescribed by the authorized officer and shall restore the site to the
16 satisfaction of the authorized officer.” *Id.* at p. 12 (VII.E.).

17 **5. Termination of the SUP**

18 BTB requested renewal of the BTB 2023 SUP some time in 2024 (“**2024**
19 **Renewal Application**”). The USFS demanded certain information from BTB, which
20 it was not forthcoming in providing. *See* Doughty Decl. ¶¶16-20. On May of 2024,
21 BTB provided information the USFS making clear that (1) it delivered part of its
22 water to the Tribe, and (2) that the Tribe was not a party to the SUP. In response to
23 questions from the USFS regarding the 2024 Renewal Application, BTB sent the
24 USFS a statement of the Nation, including the sentence: “The Tribe is not a party to,
25
26

1 nor is it bound by the terms of the [BTB 2023 SUP] or the [SWRCB Order].”
2 Doughty Decl. Exh. 22, p. 15.

3 On July 26, 2024, the USFS sent BTB a “Notice of Denial of Application for
4 Use and Occupancy of National Forest Lands; Termination of Special Use Permit
5 FCD728503 [the BTB 2023 SUP]” (“**Termination Letter**”), which notified BTB
6 that “all use of Forest System lands, including the operation and maintenance of a
7 water collection/water transmission system on USFS lands, must stop immediately,”
8 block flows through the pipeline within seven days, and prepare an infrastructure
9 removal plan within 12 weeks.

10 **C. The Nation’s interest in BTB’s infrastructure is as a successor in interest**
11 **with purchase of the Arrowhead Hotel Property**

12 The Nation purchased the former Arrowhead Hotel in 2016. Doughty Decl.
13 ¶8. The Arrowhead Hotel property is not state or federal reservation land. *Id.* ¶8.
14 BTB delivered some portion of the water it diverts from federal land to the
15 Arrowhead Hotel Property pursuant to an agreement from the 1930s, when BTB’s
16 predecessor in interest first diverted water from Strawberry Canyon and first
17 obtained a SUP from the USFS. Doughty Decl., Exh. 4, pp. 23-24. This delivery has
18 continued to the present, with the BTB agreeing to deliver 20% of the diverted water
19 to the Hotel Property, notwithstanding the terms of its SUPs. *See* Doughty Decl.
20 Exh. 22, p. 13, Exh. 25. BTB and the Nation amended the 1930s agreements on
21 December 11, 2023. Again, notwithstanding the limitations of the BTB 2023 SUP,
22 the amended agreement, committed BTB to continue to deliver 20% of whatever
23 water it diverted from Strawberry Canyon to the Hotel Property. Doughty Decl. Exh.
24 31.

D. The Nation has declined to engage with the SWRCB or the USFS

At multiple times the Nation has been made aware of the controversy surrounding the water it receives from BTB by virtue of having acquired the Arrowhead Springs Hotel:

1. In 2016, the Tribe purchased the Arrowhead Springs Hotel, which was on offer for \$60 million. Doughty Decl. ¶¶8. Presumably due diligence performed in that transaction would have unearthed LAFCO documents and entitlements discussing water sources other than Strawberry Canyon as those identified for development of the property. Doughty Decl. ¶7, Bialecki Decl. ¶¶ 13-14. In 2016, the validity of BTB's (then Nestlé's) occupation was being challenged in federal court, in a lawsuit that was filed on October 13, 2015. (ECF 6, ¶2).
2. In 2021, a representative of the Nation declined to comment to the Desert Sun regarding delivery of water to the Nation through the BTB infrastructure. Doughty Decl. Exh. 21.
3. On February 10, 2022, the Nation declined to engage in the hearing of the SWRCB regarding the water BTB diverts from the SBNF. Bialecki Decl. ¶ 11.
4. A December 11, 2023, agreement between the Nation and BTB made clear that BTB might lose its right to occupy USFS land. See Doughty Decl. Exh. 31. In May 2024, BTB wrote to the USFS, with a statement from the Nation attached, which included the sentence: "The Tribe is not a party to, nor is it bound by the terms of the [BTB 2023 SUP] or the [SWRCB Order]." Doughty Decl. Exh. 22, p. 15.

1 5. The Nation has never submitted an application for its own SUP to the
2 USFS. Doughty Decl. ¶21.

3 **E. There is no evidence of impact to cultural resources**

4 There is no evidence that decommissioning the BTB infrastructure or
5 restoring Strawberry Canyon's riparian ecosystem will harm culture resources. Gary
6 Earney, a certified Paraprofessional Archaeologist with the USFS, who was also
7 responsible for managing the SUPs for the diversion structures in Strawberry
8 Canyon from 1982 to 2007 states:

9 Cultural resource presence is unlikely, from the headwaters down to
10 the Forest property line at Arrowhead Springs Resort/Coldwater
11 Canyon due to the steep terrain on both sides of the creek, thick and
12 almost impassable vegetation on the hillsides on both sides of the
13 creek, and the dynamic nature of the stream flows during heavy
14 rain/snow melt events that I personally saw be intense enough to
15 lower the stream bottom by a good 10 feet in one afternoon--removing
16 trees at the same time. Isolated hunting, fishing and gathering would
17 have been conducted along the actual stream bottom, but camps
18 would have been restricted to milder terrain down around the hot
19 springs areas of the Resort, off Forest. The creek flushed almost
20 annually from winter rains, which would have removed/destroyed
21 isolated artifacts or evidence of human use/habitation along the creek
22 bottom, which would have been highly unlikely anyway due to the
23 aforementioned reasons.

24 Earney Decl. ¶ 5.

1 In fact, decommissioning is likely to improve resource conditions, including
2 flow in Strawberry and East Twin Creeks. Loe Decl., ¶ 12-17.

3 In support of its Motion to Intervene in *BTB v. USFS*, the Nation submitted a
4 declaration from its Director of Cultural Resources Management stating:

5 The Nation’s ancestors used the natural hot springs located throughout
6 the Arrowhead Springs property, which were considered by them to
7 be uniquely sacred and medicinal. The cold water flowing through the
8 property, including Strawberry Creek, was also important to
9 Maara’yam (Serrano) people through time, due to the dependability of
10 this water source and its capacity to support a variety of flora and
11 fauna.

12 Doughty Decl. Exh. 27, ¶8. No mention is made of use of the Headwaters or Cienega
13 Springs.

14 **F. There is overwhelming evidence of harm to natural resources from BTB’s**
15 **diversion**

16 The SBNF was founded on February 25, 1893, with the primary purpose of
17 protecting the watershed and timber supply for the surrounding communities. Prior
18 to BTB’s diversions, the United States Geological Survey (“USGS”) and other
19 sources documented that Strawberry Creek and its tributary springs were historically
20 perennial, flowing even in the dry months and supporting fish and a lush riparian
21 fauna and flora. Strawberry Creek is a tributary to the Santa Ana River and part of
22 the Santa Ana River Watershed. The USGS documented that Strawberry Creek is a
23 recharge source for the Bunker Hill Basin. The dry and diminished Strawberry Creek
24 has led to impaired riparian fauna and flora and a creek that cannot support fish, like
25 the native Speckled Dace, as fish need water to survive. BTB’s diversions have left
26 Strawberry Creek with only intermittent pooling water and fractured habitats. Water-

1 dependent flora like alders and willows no longer line the upper reaches of
2 Strawberry Creek. Because BTB has withdrawn so much water, the species observed
3 in the 1920s are gone from the Canyon. The USFS has rated each stretch of the
4 Headwaters and Cienega Springs—public resources on public lands set aside for the
5 protection of watersheds and habitat—as in poor condition as a direct result of BTB’s
6 diversions. Loe Decl. ¶¶2-17; Doughty Decl. Exh 4; Bialecki Decl. ¶¶4-7, 12.

7 **B. The Instant Motion and the Nation’s Motion in the Related Case**

8 In the related *BTB v. USFS*, the Nation also moved to intervene, and this
9 Court granted intervention. *See* Doughty Decl. ¶ 25. Notably, the Nation did not in
10 that case assert its sovereign immunity but instead waived it for purposes of
11 litigation. Doughty Decl. ¶ 25. Here, the Nation filed its motion to intervene for the
12 sole purpose of moving to dismiss, it asserts its sovereign immunity, and it contends
13 that it “cannot protect itself unless it is permitted to intervene” so it can move to
14 dismiss. ECF No. 38-2 at 18. The Nation’s two positions—waiving its sovereign
15 immunity for purposes of *BTB v. USFS* and not here, are directly contrary to each
16 other. The USFS’s management of the same resources—the Headwater and Cienega
17 Springs—are at issue. The Nation asserts it has an “ancestral territory [that] covered
18 over 7.4 million acres of land, including present-day Antelope Valley on the west,
19 southwest Mojave Desert to the north, portions of the San Gabriel and San
20 Bernardino mountains in the center, the Inland Empire to the south, and the City of
21 Twentynine Palms to the east.” Doughty Decl., Exh. 27, ¶4.

22 **III. Argument**

23 **A. Rule 24 Does Not Require Limited Intervention for the Nation.**

24 A party seeking mandatory intervention under Fed. R. Civ. P. 24(a) must meet
25 the following four requirements: (1) the applicant must timely move to intervene;
26

(2) the applicant must have an interest relating to the property or transaction that is the subject of the action; (3) the applicant must be situated such that disposition of the action may impair or impede the party's ability to protect that interest; and (4) the applicant's interest must not be adequately represented by other parties. Fed. R. Civ. P. 24(a)(2); *W. Watersheds Project v. Haaland*, 22 F.4th 828, 835 (9th Cir. 2022); *Scotts Valley Band of Pomo Indians of Sugar Bowl Rancheria v. U.S.*, 921 F.2d 924 (9th Cir. 1990). "Failure to satisfy any one of the requirements is fatal to the application." *Arakaki v. Cayetano*, 324 F.3d 1078, 1083 (9th Cir. 2003). The Nation fails to meet the requirements for mandatory intervention under Rule 24.

1. The Nation's Motion Is Not Timely.

When considering a motion to intervene, courts in the Ninth Circuit consider three factors: (1) the stage of the proceeding; (2) prejudice; and (3) the reasons for the delay. *Smith v. L.A. Unified Sch. Dist.*, 830 F.3d 843, 854 (9th Cir. 2016). Plaintiff will be significantly prejudiced should the Nation be permitted to intervene. The sole purpose of the intervention is to dismiss the case, eliminating Plaintiff's right to judicial review. And while the Nation suggests that it delayed in filing its motion because it was attempting to "resolve its water situation on its own prior to filing for intervention," Nation's Mot. to Intervene at 14, ECF No. 38-2, the record reflects that eight years have elapsed between when the Nation purchased Arrowhead Springs and Plaintiff filed the instant lawsuit, during which time the Nation has known that its access to water from BTB's pipeline was tenuous and contested, and that USFS could revoke or modify access at any time, yet the Nation did not apply for its own SUP, did not perfect its alleged water rights, and did not resolve its present concerns. Doughty Decl. ¶¶5-9, 20, 21. The Nation has failed to act to protect its rights, yet it seeks to intervene in this lawsuit for the sole purpose of

1 moving to dismiss Plaintiff's case, which is brought in the public interest, entirely.
2 This would grossly disadvantage Plaintiff by denying its members the right to
3 challenge this unlawful agency action. *Chinook Indian Nation v. Zinke*, No. C17-
4 5668 RBL, 2018 WL 4095089, at *2 (W.D. Wash. Aug. 28, 2018) (Court may
5 consider the reasons for delay and the Tribe's failure to act to protect its rights by
6 applying for an SUP or through other means as persuasive). As a result, the public
7 would be stripped of its opportunity to vindicate a public right.

8 **2. The Nation Does Not Have A Significantly Protectable Interest**
9 **Relating to the Property or Transaction.**

10 With respect to the second of the four requirements listed above, the applicant
11 must show specifically that its interest relating to the property or transaction is a
12 "significantly protectable" interest. *Donaldson v. United States*, 400 U.S. 517, 531,
13 91 S. Ct. 534, 27 L.Ed.2d 580 (1971). The interest must be "protectable under some
14 law" and there must be "a relationship between the legally protected interest and the
15 claims at issue." *See Wilderness Society*, 630 F. 3d 1173, 1179 (9th Cir. 2011). The
16 mere fact that the outcome of Plaintiff's litigation "may have some financial
17 consequences for the non-party tribe is not sufficient to make" the Nation a required
18 party, however. *Cachil Dehe Band of Wintun Indians of the Colusa Indian Cmty. v.*
19 *California*, 547 F.3d 962, 971-72 (9th Cir. 2008). The interest must be "more than a
20 financial stake." *Makah Indian Tribe v. Verity*, 910 F.2d 555, 558 (9th Cir. 1990);
21 *Maverick Gaming LLC v. United States*, 123 F.4th 960, 983 (9th Cir. 2024) (J.
22 Miller, concurring) ("a competitive injury, by itself, is not enough to make a tribe a
23 required party."). The Nation is therefore not a required party to this action.

24 In *Donaldson*, the Supreme Court rejected a motion to intervene on the grounds
25 that the proposed intervenor lacked a "protectable interest" in the proceeding. There,
26 the IRS issued a summons to Donaldson's past employer seeking records that

1 included Donaldson's personal tax information. *Donaldson*, 400 U.S. at 522-23. He
2 had an interest, because the employer's records might reveal illegal activity, but his
3 interest was not "protectable" because the records were not his, and he had no
4 proprietary or legal right to interfere with his previous employer's disclosure to the
5 IRS. *Id.* at 530. Donaldson did not own the records, and he had no legal privilege or
6 other right to keep his former employer from giving them to the IRS. *Id.* The Court
7 should deny the Nation's motion under Rule 24(a)(2) for the same reason: the
8 Nation does not have a protectable interest related to Plaintiff's claims, which arise
9 under federal statutes that mandate USFS to manage environmental resources within
10 the National Forest System in a manner that ensures their long-term health and
11 sustainability. To the extent that the Court finds that the Nation has asserted any
12 legally protected interest, the interest is purely financial, thus there is no relationship
13 between that interest and the claims which focus exclusively on administrative,
14 ministerial acts. Several factors support this conclusion.

15 First, the challenged agency actions do not authorize any activity on tribal
16 land, nor do they implicate tribal sovereignty or self-governance. Although not
17 identical, federal rules 19(a)(1) and 24(a)(2) are similar in that courts consider
18 whether the land at issue was owned by the intervening tribe or whether there
19 were other facts and circumstances that clearly implicated tribal sovereignty, self-
20 governance, and self-determination in reviewing both. *See Deschutes River All. v.*
21 *Portland Gen. Elec. Co.*, 1 F.4th 1153, 1163 (9th Cir. 2021) ("DRA challenges the
22 operation of a large hydroelectric project co-owned and co-operated by the Tribe,
23 and located partly on the Tribe's reservation."); *Am. Greyhound Racing, Inc. v. Hull*,
24 305 F.3d 1015, 1027 (9th Cir. 2002) (gaming on tribal lands); *Dine Citizens Against*
25 *Ruining Our Env't v. Bureau of Indian Affs.*, 932 F.3d 843, 858 (9th Cir. 2019) (coal
26

1 mine and power plant on Navajo Nation land); *Maverick Gaming LLC v. United*
2 *States*, No. 3:22-CV-05325- DGE, 2023 WL 2138477, at *2 (W.D. Wash. Feb. 21,
3 2023) (gaming on tribe’s reservation); *Kescoli v. Babbitt*, 101 F.3d 1304, 1307 (9th
4 Cir. 1996) (“Although the mine complexes are located on the Navajo Nation’s
5 reservation, the Navajo Nation and the Hopi Tribe are joint owners of some of the
6 subsurface minerals.”). In this case, the challenged activity does not take place on
7 the Nation’s land, but instead it involves the diversion of water from a national forest
8 for bottling and distribution outside of the watershed. The Nation has no land
9 ownership or legal easements at stake in this lawsuit.

10 Second, the challenged agency actions do not implicate any permit granted to
11 the Nation, and the Nation is not a third-party beneficiary of BTB’s Special Use
12 Permit.¹ Doughty Decl. Exh 30, p. 4 (section IV.C). Nor will Plaintiff’s claims
13 prevent the Nation from applying for its own permit or attempting to perfect its
14 alleged historical water rights. The Nation’s claimed interest here is as an agreement
15 with the permit holder, BTB, yet any obligations created by this agreement do not
16 eviscerate USFS’s statutory mandates. Even if the protected interest involved the
17 Nation’s own permit or a contract between USFS and the Nation, federal law would
18 still require the agency to meet its statutory obligations. *Oregon Nat. Res. Council*
19

20 ¹ As the Nation is not a third-party beneficiary of the permit, it also lacks Article III
21 standing. *Scotts Valley Band of Pomo Indians v. United States Dep’t of the Interior*,
22 337 F.R.D. 19, 23 (D.D.C. 2020), *aff’d sub nom. Yocha Dehe v. United States Dep’t*
23 *of the Interior*, 3 F.4th 427 (D.C. Cir. 2021), and *aff’d sub nom. Yocha Dehe v.*
24 *United States Dep’t of the Interior*, 3 F.4th 427 (D.C. Cir. 2021) (“Where, as here, a
25 party seeks to intervene as a defendant in case against a federal agency, courts in this
26 district have held that “the party must establish that it will be ‘injured by the setting
27 aside of the government’s action it seeks to defend, that this injury would have been
28 caused by that invalidation, and the injury would be prevented if the government
action is upheld.”

1 *Action v. U.S. Forest Serv.*, 445 F. Supp. 2d 1211, 1220–21 (D. Or. 2006) (“The
2 Ninth Circuit has made it clear that an agency may not limit its obligations to
3 prepare an environmental assessment that complies with NEPA by entering into a
4 contract.”). In *Metcalf v. Daley*, 214 F.3d 1135, 1139 (9th Cir.2000), the federal
5 defendants signed a contract with the Makah Indian Tribe, agreeing to make a
6 formal proposal urging the International Whaling Commission to allow the tribe to
7 engage in limited whaling. The next year, the defendants completed an
8 environmental assessment which found that the whaling proposal would not
9 significantly affect the environment. *Id.* at 1140. Pointing out that NEPA’s
10 effectiveness depends entirely on involving environmental considerations in the
11 initial decision-making process, the Ninth Circuit concluded that the agency had
12 prepared the EA too late, after it had already committed itself contractually to the
13 proposal it was analyzing. Despite the existence of the government contract with the
14 tribe, the Ninth Circuit ordered the agency to prepare a new EA under circumstances
15 that ensured an objective evaluation, free of the previous taint. *Id.* at 1146.

16 Similarly, here, the Nation must have a legally protected interest in the
17 challenged actions, and the Nation’s interest in barring the Service from engaging in
18 discreet, federal mandates is not an interest that is “protectable under law” or
19 redressable through this action. Just as Plaintiff’s claims do not prevent the Nation
20 from pursuing “its water rights, including its right to apply for its own permit,” the
21 Nation has no cognizable or legally protected interest in perpetuating an unlawful
22 agency process. This lawsuit is not aimed at vacating any permits or approvals that
23 the Nation has obtained from the Service. To the extent that the Nation has asserted
24 any legally protected interest in lawfully securing access to water for its private
25 property, this litigation will not impair or impede the Nation’s ability to protect those
26

1 specified interests. Just as Donaldson had no legal right to keep his former employer
2 from handing his records over to the IRS, *Donaldson*, 400 U.S. at 522-23, the Nation
3 has no legal right to prevent an agency from fulfilling its statutory duties.

4 Third, any investment of resources by the Nation to obtain the appropriate
5 permits and authorizations from relevant agencies or to establish its own water
6 delivery infrastructure is not a viable or cognizable “protected legal interest.” The
7 mere fact that the outcome of Plaintiff’s litigation may have some financial
8 consequences for the Nation is not sufficient to make the Nation a required party,
9 however. *See, e.g., Makah*, 910 F.2d at 558 (“[The] interest must be more than a
10 financial stake.”). Spending money on obtaining approvals for a development project
11 is not itself a “protected legal interest.” More importantly, the Nation made a choice
12 to invest its resources in Arrowhead Springs knowing that USFS could suspend
13 water deliveries or deny BTB’s future permits. *See, e.g., Doughty Decl. Exh*
14 *31* (“During the interim period, BTB may suspend deliveries if ordered to do so by a
15 government agency such as SWRCB or USFS, or a court and BTB shall notify the
16 Tribe of such order”).

17 And finally, to the extent that the Nation has certain legal claims or defenses
18 that it wants to present to this Court, the Court can grant permissive intervention—as
19 opposed to limited intervention—under Fed. R. Civ. P. 24(b)(1)(B) for the Nation to
20 pursue its claims and defenses. The Nation’s position, ECF 38-2 at 15, is that USFS
21 lacks any right to “protect public property, public safety, and natural resources on
22 National Forest System lands in compliance with” its statutory mandates, First
23 Amended Complaint at 81 (citing *Nestlé 2018 SUP*). These are “legal claims or
24 defenses” not “legally protectable interests.” Similarly, to the extent that the Nation
25 wants to argue that USFS need not comply with statutorily mandated procedures or
26

1 that a special use permit is not required here, those are legal claims that they can
2 raise with permissive intervention, not “legally protectable interests.”

3 **3. Disposition of this Action Will Not Impair or Impede the**
4 **Nation’s Ability to Protect Its Claimed Interests.**

5 To be granted intervention as a matter of right, the applicant must be
6 situated such that disposition of the action may impair or impede the party’s ability to
7 protect that interest. Fed. R. Civ. P. 24(a)(2). The Nation’s motion for limited
8 intervention based on Fed. R. Civ. P. 24(a)(2) should be denied because the Nation
9 is not situated such that disposition of the action may impair or impede the party’s
10 ability to protect the legal interests that they have alleged. As explained above, the
11 Nation does not own the property, nor does it have jurisdiction over the property at
12 issue, nor does it claim any treaty rights. Plaintiff is not challenging a permit held by
13 the Nation and a ruling in favor of Plaintiff will not prevent the Nation from applying
14 for one. This lawsuit is not aimed at vacating any permits or approvals that the
15 Nation has already obtained from the Service. To the extent that the Nation has
16 asserted any legally protected interest, this litigation will not impair or impede the
17 Tribe’s ability to protect those specified interests.

18 **4. UFSF Can Adequately Represent the Nation.**

19 The final element requires the applicant to show that existing representation
20 may be inadequate. Generally, “[t]he United States may adequately represent an
21 Indian tribe unless there is a conflict between the United States and the tribe.”
22 *Makah*, 910 F.2d at 558. A conflict of interest may be found where there are
23 divergent interests at stake among or between tribes and the United States that render
24 the United States unable to carry out its trust obligations. *See Shermoen v. United*
25 *States*, 982 F.2d 1312, 1318 (9th Cir. 1992). In *Southwest Center for Biological*
26

1 *View v. Babbitt*, 150 F.3d 1152, 1154 (9th Cir. 1998), the Ninth Circuit found that
2 the shared interests of the government and the Indian community in defeating the
3 lawsuit on the merits meant that the Indian community would be adequately
4 represented by the government. *See also Alto v. Black*, 738 F.3d 1111, 1127 (9th Cir.
5 2013) (finding that United States adequately represented tribe's interests).

6 The Nation's reliance on *Diné Citizens Against Ruining Our Environment v.*
7 *Bureau of Indian Affairs*, 932 F.3d 843, 855 (9th Cir. 2019), is misplaced. The
8 sovereign interests implicated in *Diné* concerned the operation of the Navajo
9 Nation's wholly owned mining corporation on Navajo Nation lands. The Ninth
10 Circuit observed that "[t]he Navajo Nation's interest is tied to its very ability to
11 govern itself, sustain itself financially, and make decisions about its own natural
12 resources." *Id.* at 856. Here, the land is not tribal land and the Nation's interest in
13 lawful governmental procedure is equal to that of the USFS.²

14 **B. Questions Regarding the Nation's Status as a Necessary Party and**
15 **its Sovereign Immunity Are Not Currently Before the Court.**


16 In its Motion for Limited Intervention, the Nation presents arguments alleging
17 that the Nation is a necessary party and has not waived its sovereign immunity. The
18 Nation has gone as far as to file its proposed motion to dismiss. ECF No. 38-15.
19 The Court need not consider questions regarding whether the Nation is a necessary
20 party under Federal Rule 19 and whether the Nation has waived its sovereign
21 immunity at this time. The Nation's Motion for Limited Intervention requests
22 intervention solely under Fed. R. Civ. P. 24(a) or (b) for the limited purpose of
23 moving for dismissal pursuant to Rules 19 and 12. As the Nation's motion to dismiss

24
25 ² The Nation has not established any water right, nor is it necessary for this Court to
26 adjudicate the rights of the Nation in considering the legality of BTB's SUPs, or to
27 resolve Plaintiff's claims in this case.

1 is not yet at issue, Plaintiff has not had an opportunity to file a response. In addition,
2 Plaintiff would like to engage in limited discovery on the issues presented in that
3 motion, such as waiver of sovereign immunity. If this court grants Limited
4 Intervention under Rule 24(a) or (b), then the questions of necessary party and
5 sovereign immunity will be addressed pursuant to the Nation's responsive pleading.
6

7 Dated: June 16, 2025

Respectfully Submitted,

8
9 By: 
10 GREENFIRE LAW, PC
11 Rachel S. Doughty
12 Attorneys for *SAVE OUR FOREST*
13 *ASSOCIATION, INC.*
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